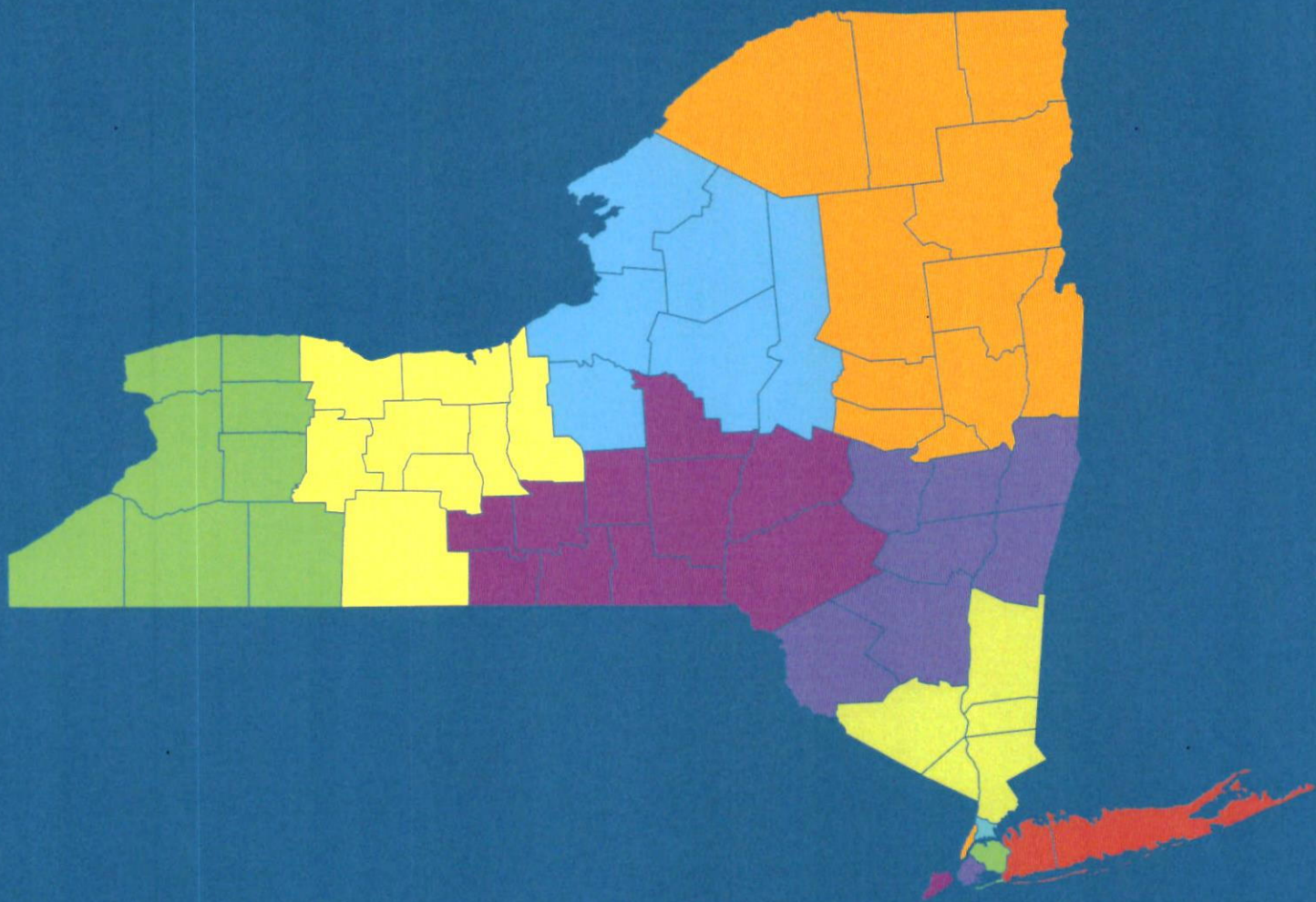

2020 Report of the Chief Administrator of the Courts on the
STATUS *of* FORECLOSURE CASES
Pursuant to Chapter 507 of the Laws of 2009



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Preface

To the Governor and the Legislature of the State of New York:

I AM PLEASED TO SUBMIT THIS REPORT on the status of foreclosure settlement conferences in the New York State Courts. Section 10-a(2) of Chapter 507 of the Laws of 2009 directs that “the chief administrator of the courts shall submit a report...to the governor [and key legislative officials] on the adequacy and effectiveness of the settlement conferences authorized [under section 10-a(1)]...which shall include, but not be limited to the number of adjournments, defaults, discontinuances, dismissals, conferences held, and the number of defendants appearing with and without counsel.” Accordingly, this Report provides the required data and other additional information regarding residential foreclosure cases and the foreclosure settlement conferences for the period October 7, 2019 to October 5, 2020.



Lawrence K. Marks
Chief Administrative Judge

I. Introduction

The New York State Unified Court System's (UCS) 2019 Report on the Status of Foreclosure Cases highlighted a decade's worth of progress in response to the 2008 financial crisis. From creating safeguards for unrepresented homeowners and reducing the statewide docket by almost 60,000 cases to standardizing court operations, judges, court attorneys, and administrators committed themselves toward bringing these cases to a just and fair conclusion.

Today the world is facing another far more pervasive crisis fueled by the COVID-19 pandemic. Despite the incredible obstacles caused by the pandemic, UCS administrators, judges and non-judicial staff have stood by our fundamental commitment to providing justice. Indeed, notwithstanding the truly unprecedented effects of COVID-19, including the historic "pausing" of New York State, at no point did the UCS cease operations. Chief Judge Janet DiFiore put it best when she said, "the New York State Unified Court System has never stopped functioning. Not for a day, not for an hour, not for a minute."

While court operations never ceased, they did have to be quickly modified to comply with public health guidance. Almost immediately, wherever possible, the entire court system transitioned from in-person to virtual court appearances. With regard to foreclosure cases, Executive Orders precluded judges from issuing decisions or judgments for several months. Emergency federal and state legislation also provided certain protections for homeowners and commercial businesses facing foreclosure, leading to hundreds and thousands of loan forbearances. At the same time, the UCS was developing policies and procedures to bring foreclosure proceedings back to full capacity, whether those proceedings were in-person, virtual, or a combination of both.

As a result of this work, the UCS continues to see a significant decline in the number of pending foreclosure cases. This 2020 Report details our case processing initiatives, examines foreclosure statistics, and provides a plan for how the UCS will address foreclosure cases moving forward.

II. Recent Developments

As COVID-19 spread, the UCS responded with swift and decisive action to protect our public health. In March, the UCS transitioned to a virtual court model and began a fundamental transformation of our courthouses to minimize foot traffic. Although New York State and New York City were at one time the epicenter of the COVID-19 outbreak, Judge DiFiore never wavered from her commitment to keep our courts open, to deliver swift and fair justice, and to uphold the rule of law.

After converting our Criminal and Family Courts to a virtual model, the UCS developed policies and procedures to conduct Civil and Supreme Court proceedings, including foreclosure cases, virtually. Consistent with Governor Cuomo's Executive Orders, the UCS began by implementing procedures for commencing new foreclosures by e-filing. Commencement papers were required to include two new documents: a special affirmation by counsel that the homeowner was not

suffering a COVID-19 related hardship, and a special notice to the homeowner setting forth certain legal rights. Proceedings were automatically stayed with the exception of settlement conferences in cases where both sides were represented by counsel.

With the passage of Chapters 112 and 126 of the Laws of 2020 (see Section V, *supra*) in June of 2020, the UCS amended its procedures to allow foreclosure cases to proceed in the normal course with several notable exceptions and with certain important modifications to pre-COVID standard practices. To the fullest extent practicable, foreclosure proceedings are now being conducted remotely. Many of these remote appearances consist of what has come to be known as "COVID-19 assessment conferences," which judges must preside over prior to conducting any further proceedings in a foreclosure matter. At this conference, judges will review the case's procedural history, confirm compliance with no-

tice requirements, and inquire into the effects that COVID-19 has had upon the parties and whether the homeowner is entitled to any relief under federal or New York State law. Judges will also refer unrepresented parties to local civil legal service providers and housing counseling agencies and use their best efforts to help the parties resolve any outstanding issues in order to reach a settlement. The requirement to conduct the conference will eventually expire, but it is expected that judges will continue these practices, where possible, during CPLR 3408 settlement conferences.

Another notable modification to foreclosure procedures involves auctions. Prior to COVID-19, auctions in some counties – particularly in the five boroughs – involved large calendars that attracted hundreds of attorneys, bidders, and other interested parties. To reduce courthouse traffic and to comply with social distancing guidelines, each district was tasked with formulating a plan to make sure that auctions would be held in large, open spaces. Although these auction plans take into consideration the unique circumstances of each judicial district, several important concepts are universal. For example, referees assigned to preside over an auction must now contact the court to schedule a specific date and time to ensure that auctions do not overlap. Auctions that are not scheduled with the court cannot proceed under any circumstances. New judgments of foreclosure and sale are required

to reference the applicable auction plan so that referees are aware of and follow the court's procedural and safety protocols.

The UCS also continues to make improvements to general foreclosure operations. A Report of Sale form has been created to assist referees in complying with their reporting requirements and improve the court's own record-keeping capacity. In conjunction with a revised Surplus Monies Form released in 2019, homeowners will be better equipped to apply for surplus monies that exist from the sale of their foreclosed homes. Both forms will be integrated into the court's Universal Case Management System. For reference, all of the UCS' foreclosure-related forms can be found at www.nycourts.gov/forms/foreclosure/index.shtml.

Going forward, the Office of Policy & Planning is studying the efficacy of transitioning the UCS to a virtual auction model. This has been successful in other states, would eliminate the need for large gatherings, and would almost certainly ensure that homes attract more bidders. A virtual model has the potential to lead to higher sales prices and more surplus monies for the homeowner. Court staff are also working with the foreclosure bar on training materials and guidelines for referees appointed pursuant to orders of reference and judgments of foreclosure and sale, and are in the process of developing uniform Terms of Sale.

III. Filing Trends

During the Reporting Period (October 7, 2019 to October 5, 2020), plaintiffs filed 10,149 residential and commercial cases. This represents a 54% decrease from the 22,147 cases reported during the 2019 Reporting Period. This substantial reduction in case filings is in large part attributable to the moratoria imposed upon foreclosure filings by New York State and the federal government, as well as forbearance programs put in place by the New York State Legislature and the Federal Housing Finance Agency. For annual filings for 2006 through 2020, see Fig. 1.¹

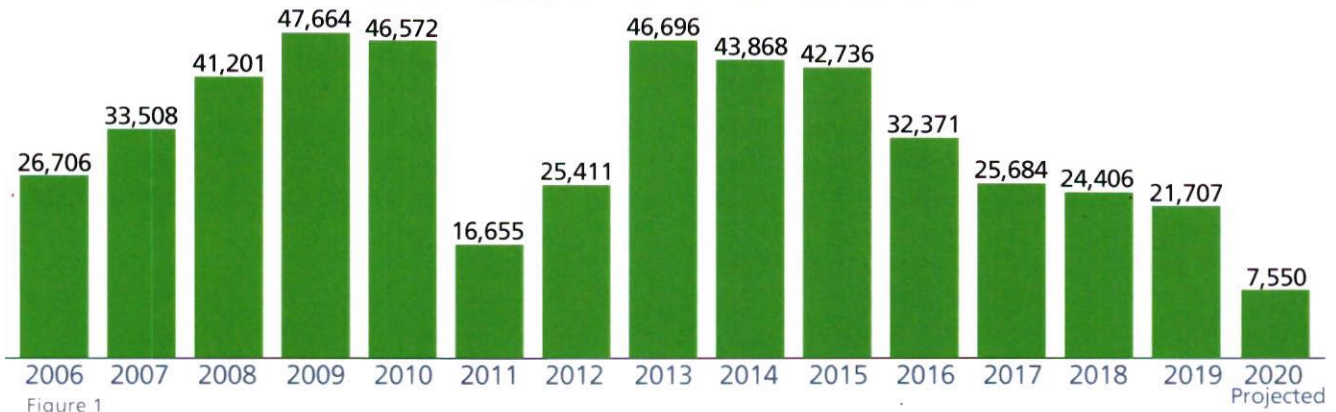
Of the 10,149 cases filed during the Reporting Period, 8,322 are eligible to be scheduled for a foreclosure settlement conference pursuant to CPLR 3408, which helps facilitate communication between lenders and homeowners with the goal of entering into a loan modification agreement or other mutually agreeable settlement. These conferences are virtually staffed by dedicated teams of judges, law clerks, court attorney referees, and court clerks.

1. The 2020 figure is a projection.

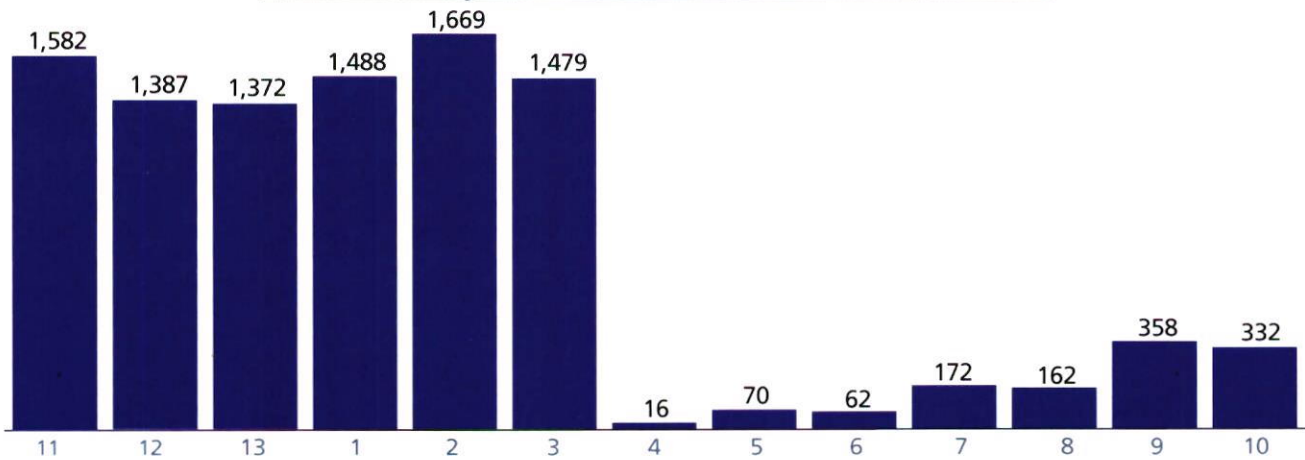
The volume of new filings in the Reporting Period varied greatly by court term with a statewide high of 1,669 in Term 2 of 2020 and a statewide low of 16 in Term 4 of 2020 (see Fig. 2). New filings in courts within New York City totaled 2,380. New filings in courts outside of New York City totaled 7,769. During the height of the pandemic there were only a handful of filings across the State.

As of October 5, 2020, the end of this Reporting Period, there were 27,365 foreclosure cases pending statewide (see Fig. 3), a 70% reduction from the 92,339 cases pending at the end of the 2014 Reporting Period. Case dispositions continue to outpace filings throughout the State, in no small part due to the ability of our judges and non-judicial staff to work remotely throughout the pandemic (see Fig. 4).

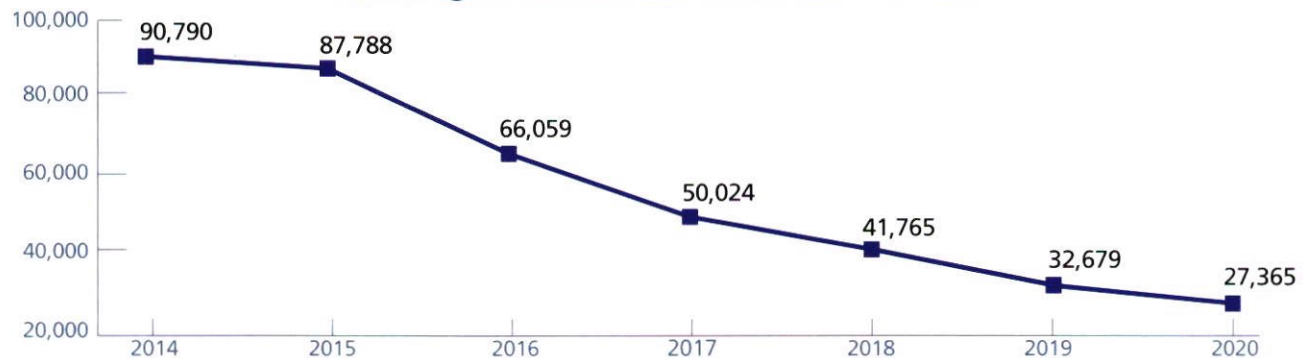
Annual Foreclosure Filings 2006 - 2020



Cases Files by Term October 2019 - October 2020



Pending Foreclosure Cases 2014 - 2020



Foreclosure Cases Filed And Disposed 2014-2020

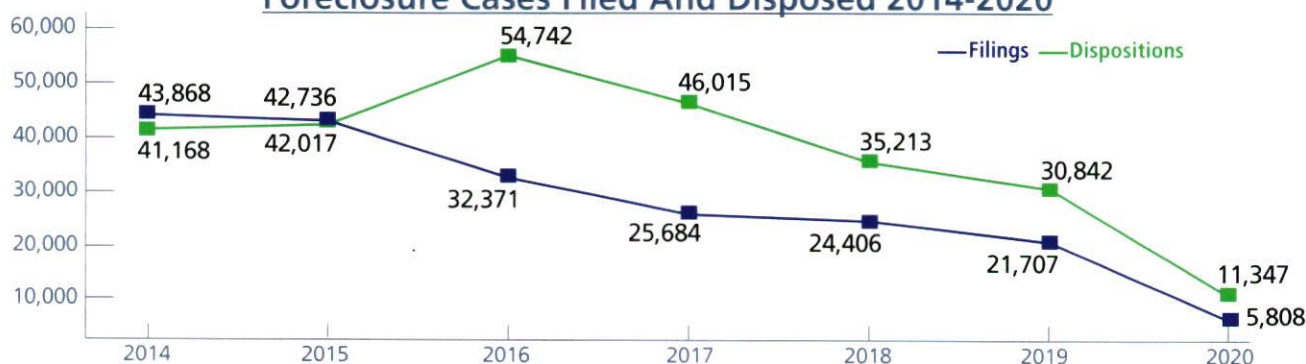


Figure 4

IV. Foreclosure Settlement Conferences

During the Reporting Period, there were 17,313 foreclosure settlement conferences held in courts throughout New York State (see Fig. 5). Again, because of COVID-19, this represents a significant decrease from last year, but continues the overall trend that began in 2015. Since many cases require several conferences for the parties to gather financial documents and ascertain whether a settlement can be reached, there were 11,902 adjournments in the foreclosure settlement parts. There were also 1,638 defaults by homeowners, 308 voluntary discontinuances recorded, and three cases that were dismissed by the court.

Foreclosure Settlement Conference Appearances

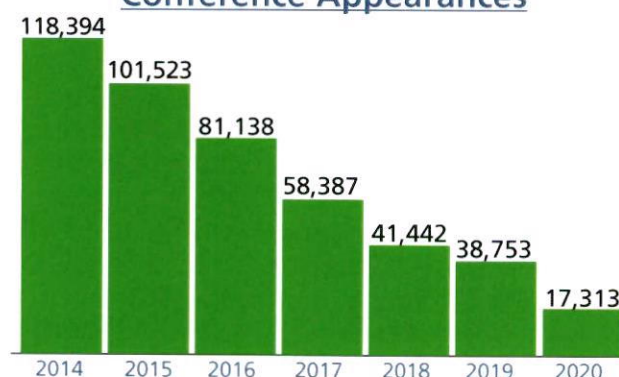


Figure 5

V. Federal and State Legislation

A. FEDERAL LEGISLATION

The Coronavirus Economic Stabilization Act of 2020 (CARES Act) was signed into law on March 27, 2020. The CARES Act placed a foreclosure moratorium on certain properties with federally backed mortgages through August 31, 2020. This initial moratorium has since expired but, on August 27, 2020, the Federal Housing Finance Agency (FHFA) announced that Fannie Mae and Freddie Mac extended the moratoriums on single-family foreclosures until at least December 31, 2020. This moratorium only applies to Fannie and Freddie-backed, single-family mortgages, and prohibits lenders and servicers from commencing foreclosure proceedings or from finalizing a judgment of foreclosure and sale.

B. STATE LEGISLATION

In New York, Chapter 112 of the Laws of 2020 was enacted on June 17, 2020, and subsequently amended by Chapter 126 of the Laws of 2020. Collectively, these laws require New York regulated banking organizations to grant forbearance applications on residential mortgages for a period of up to 360 days. This law applies to residential mortgagors who are in arrears, on a trial plan, or have applied for loss mitigation and can demonstrate a COVID-19 related hardship. The law allows a homeowner who is granted a forbearance the option to:

- Extend the term of the loan for the length of the forbearance without being charged additional interest, late fees, or penalties;
- Negotiate a loan modification or other loss mitigation option;
- Defer arrears accumulated during the forbearance as a non-interest-bearing balloon payment payable at the maturity of the loan.

VI. Executive and Administrative Orders

A. EXECUTIVE ORDERS

In addition to the federal and state laws implemented to protect homeowners, Executive and Administrative Orders from the Governor and UCS, respectively, have sought to carefully normalize foreclosure operations as we navigate COVID-19. Of the many Executive Orders issued since the pandemic began, several address foreclosures specifically, namely:

- Executive Order 202.8 (March 7, 2020) – declaring that there would be no “foreclosure of any residential or commercial property for a period of ninety days.”
- Executive Order 202.28 (May 7, 2020) – declaring that there would be no “foreclosure of any residential or commercial mortgage, for non-payment of such mortgage, owned or rented by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020.”
- Executive Order 202.48 (July 6, 2020) – continuing Executive Order 202.48 “only insofar as it applies to a commercial tenant or commercial mortgagor” and noting new legislation intended for residential mortgagors set forth in Chapters 112 and 126 of the Laws of 2020.
- Executive Order 202.57 (August 20, 2020) – continuing the prohibition on the initiation of a foreclosure of any commercial mortgage for nonpayment through September 20, 2020.
- Executive Order 202.64 (September 18, 2020) – continuing the prohibition on the initiation of a foreclosure of any commercial mortgage for nonpayment through October 20, 2020.
- Executive Order 202.70 (October 20, 2020) – continuing the prohibition on the initiation of a foreclosure of any commercial mortgage for nonpayment through January 1, 2021.

B. ADMINISTRATIVE ORDERS

Consistent and in furtherance of these Executive directives, the UCS issued Administrative Orders relating to residential and commercial foreclosure matters:

- Administrative Order 131/20 and accompanying memorandum (June 23, 2020)
 - Administrative Order 131/20 reauthorized the filing of residential and commercial foreclosure proceedings. As a condition of filing, plaintiff’s counsel had to affirm that counsel had reviewed the various state and federal statutes and executive orders on foreclosure proceedings and believed in good faith that the filing was not inconsistent with those authorities. The plaintiff’s counsel also had to file a notice, which was available in both English and Spanish, informing the defendants that they could be eligible for an extension of time to answer the complaint in light of directives limiting the ability of plaintiffs to enter a default judgment.
- Only foreclosure matters in which all parties were represented by counsel could be calendared for a virtual settlement conference. In terms of motion practice, lenders could move for a judgment of foreclosure and sale on the ground that a property was vacant and abandoned or to discontinue a pending case. No other foreclosure-related motions could be entertained.
- Administrative Order 143/20 and accompanying memorandum (July 7, 2020)
 - In response to Chapters 112 and 126 of the Laws of 2020, Administrative Order 143/20 discontinued the affirmation requirement with respect to the various state and federal mandates on foreclosure proceedings as was previously required by Administrative Order 131/20.
- Administrative Order 157/20 (July 23, 2020)
 - With the exception of those residential and commercial foreclosure matters that fell within the scope of the moratoria imposed by Executive Order 202.28, its progeny, and Chapters 112 and 126 of the Laws of 2020, Administrative Order 157/20 removed most restrictions on foreclosure proceedings while installing new safeguards for homeowners.

Specifically, all courts had to initiate a status or settlement conference – known now as a “COVID Assessment Conference” – prior to conducting any further proceedings in any foreclosure matter. During these conferences, courts must review the procedural history of the matter, identify any effect COVID-19 has had on either party, consider any special relief under state or federal law either party may be entitled to, refer unrepresented parties to local civil legal service providers and housing agencies, assess any motions, approve briefing schedules by stipulation, and resolve any outstanding issues to the extent possible. All such conferences would be conducted remotely whenever possible.

- Administrative Order 157/20 also prohibited the sale of any residential or commercial property at auction until at least October 15,

2020, so that each judicial district and county could develop plans for the safe and healthful conduct of such auctions, taking into consideration both procedural issues and COVID-19 guidelines.

- Administrative Order 232/20 (October 22, 2020)
 - Administrative Order 232/20 extends the requirement that judges conduct COVID Assessment Conferences. Exceptions include properties that have been deemed vacant and abandoned and certain tax lien foreclosures matters.
 - Administrative Order 232/20 also makes clear that auctions must be conducted in accordance with each judicial district’s approved foreclosure auction plans and that all auctions must comply with the UCS’ COVID-19 related safety protocols.

VII. Legal Representation

More than ever, the UCS is committed to ensuring that New Yorkers have access to free, high-quality legal representation. With the budgetary support provided by the Governor and Legislature, during the 2019-2020 fiscal year the UCS allocated \$85,000,000 to civil legal service providers to represent low-income New Yorkers with “essentials of life” litigation, including housing, family matters, access to

healthcare, and education. With this continued commitment to civil legal service representation, approximately 122,888 New Yorkers benefited from housing and foreclosure-related legal services during the 2019-2020 fiscal year. From Term 11 of 2019 through Term 10 of 2020, almost half of homeowners appeared at their settlement conferences with assistance from legal counsel (Fig. 6).

VIII. Statewide Foreclosure Working Group

The Statewide Foreclosure Working Group is chaired by the Hon. Sherry Klein Heitler, Chief of Policy and Planning for the New York State Court System. It is comprised of several hundred judges, court attorney-referees, law clerks, chief clerks, district executives, and other court personnel, representing all thirteen Judicial Districts. Both during and between meetings, members discuss legal and operational issues as they arise. Even prior to the COVID-19 pandemic, the Foreclosure Working Group met virtually. As such, the membership maintained open communication with court officials throughout the pandemic and has been extraordinarily helpful as we develop and adjust our foreclosure-related protocols.

Homeowner Representation During Foreclosure Settlement Conferences October 2019 - October 2020

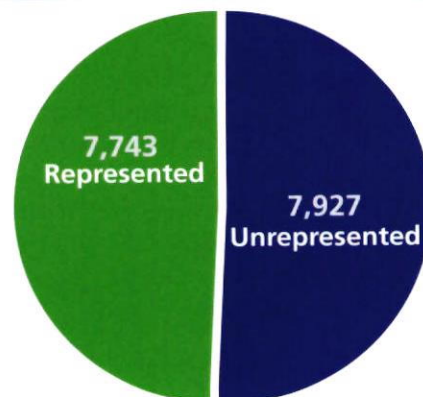


Figure 6

IX. Collaboration

The UCS collaborates with foreclosure experts in both the public and private sectors to ensure that foreclosure practices are fair and uniform. To accomplish these goals, court personnel maintain regular contact with lender and loan servicer attorneys, civil legal services providers, members of the private defense

bar, and housing counseling agencies. Court personnel also serve on the New York City Bar Association's Mortgage Foreclosure Task Force. Members include lender and borrower attorneys, mortgage servicers, and civil legal services providers who reside in and practice across the State, not just New York City.

X. Conclusion

Knowing how truly indispensable it is to provide access to our courts, the New York State Unified Court System never ceased its operations. Instead we immediately transformed into a technology-forward organization able to adjudicate all matters, both criminal and civil. As the economy reopens, and as we inch closer towards a COVID-19 vaccine, to say that our judges and non-judicial staff have gone above and beyond throughout the pandemic would be an understatement.

There still remains uncertainty as to COVID-19's long-term effects on the economy. With overwhelming unemployment across New York, there is little doubt that foreclosure filings will increase in 2021 and beyond. Still, we are optimistic about the future, and particularly confident in our ability to adjudicate these cases fairly and efficiently. The judges and court staff who work on foreclosure cases will have the technology they need to work remotely and to conference cases with homeowners who wish to appear virtually. Procedures are in place to ensure that no homeowner is forced to give up their home unless every possible opportunity has been exhausted to reach a settlement. Court administrators continue to make improvements in our operations and record-keeping while maintaining an open dialogue with the private foreclosure bar and civil legal services providers. At the same time, the UCS' strong commitment to free, quality legal representation for those in need has not waned. Now, perhaps more than ever, it is important that homeowners come to court, in-person or virtually, with a lawyer by their side.

SUMMARY TABLE

October 7, 2019 - October 4, 2020

Conferences Held	17,455
Number of Adjournments	11,902
Discontinuances	308
Dismissals	3
Defaults	1,638
Defendants Appearing with Counsel ¹	7,743
Defendants Appearing without Counsel ¹	7,927

1. Based upon the conferences held between October 7, 2019 and October 4, 2020, excluding appearances where the defendant defaulted.

The UCS is fully prepared to oversee these important cases as we enter the next decade. Having embraced new technologies, the UCS is now equipped to assist New Yorkers who walk through our courthouse doors as well as those appearing through their screens and over the phone. With these new opportunities also come a new set of challenges that the UCS will embrace and no doubt overcome in the upcoming years. As the UCS strives to address these challenges and adapts to an ever-changing legal landscape, we remain dedicated to providing the highest level of justice and service to all parties.

